CIVIL CASE MANAGEMENT PLAN

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

Yoder, et al.,

Plaintiffs, No. **09-CV-007 TJM/GHL**

v.

Town of Morristown, et al.

Defendants.

After consultation of counsel for the parties, this Civil Case Management Plan is submitted in accordance with Federal Rule of Civil Procedure 26(f) and is adopted as the Scheduling Order of this Court in accordance with Fed. R. Civ. P Rule 16(f).

1) JOINDER OF PARTIES: Any application to join any person as a party to this action shall be made on or before the **31st** day of **July, 2009**

2) AMENDMENT OF PLEADINGS: Any application to amend the pleadings to this action shall be made on or before the **31st** day of **July, 2009**.

3) DISCOVERY: All discovery in this action shall be completed on or before the **1st** day of **December, 2009**. **(Discovery time table is to be based on the complexity of the action.)**

4) MOTIONS: All motions, including discovery motions, shall be made on or before the **1st** day of **February, 2010**. **(Non-Dispositive motions including discovery motions may only be brought after the parties have complied with Section IX of General Order #25.)**

5) PROPOSED DATE FOR THE COMMENCEMENT OF TRIAL: The action will be ready to proceed to trial on or before the **7th** day of **April, 2010**. It is anticipated that the trial will take approximately **seven** days to complete. The parties request that the trial be held in **Watertown**, NY. **(The proposed date for the commencement of trial must be within 18 months of the filing date.)**

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6) HAVE THE PARTIES FILED A JURY DEMAND: ___X__(YES) /_____(NO).

7) DOES THE COURT HAVE SUBJECT MATTER JURISDICTION? ARE THE PARTIES SUBJECT TO THE COURT'S JURISDICTION? HAVE ALL PARTIES BEEN SERVED?

The Court has subject matter jurisdiction over Plaintiff's claims arising under the laws of the United States pursuant to 28 U.S.C. § 1331 and subject matter jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367. All of the parties are subject to the Court's *in personum* jurisdiction. All Defendants waived service by completing and signing waiver of service forms.

8) WHAT ARE THE FACTUAL AND LEGAL BASES FOR PLAINTIFF'S CLAIMS AND DEFENDANT'S DEFENSES (INCLUDE COUNTERCLAIMS & CROSSCLAIMS, IF APPLICABLE)?

Plaintiffs are residents of the Town of Morristown, New York and are practitioners of the Old Order Amish faith. Plaintiffs have resided in St. Lawrence County for decades without incident or issue. Although Plaintiffs' religious practice and way of life has not changed, Morristown Town officials began issuing citations to Plaintiffs for alleged violations of the New York State Building and Fire Code (the "Building Code"), as well as other related local laws, starting in 2006. All attempts to obtain exemptions based on religious practice have failed.

Plaintiffs' claims are based on the First and Fourteenth Amendments of the United States Constitution, Article I, Sections 3 and 11, of the New York State Constitution, the Fair Housing Act; 42 U.S.C. § 3601 *et seq.*, and the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc *et seq*.

Defendants disagree with Plaintiffs' position. Defendants have advanced the following defenses on behalf of the Town: 1) Plaintiffs' claims are barred in whole or in part by their failure to satisfy conditions precedent to commencing the instant action pursuant to New York Town Law; 2) the Town has not deprived Plaintiffs of any rights, privileges or immunities secured under the Constitution or Laws of the United States; 3) Plaintiffs free exercise rights were not substantially burdened; 4) any state action taken by the Town was legitimate and justified by compelling governmental interest and/or the least restrictive means of furthering that compelling governmental interest; 5) the Town did not engage in any actions towards Plaintiffs that were the by product of a discriminatory intent; and 6) any damages suffered by Plaintiffs were caused in whole or in part by Plaintiffs' culpable conduct and/or failure to mitigate damages.

9) WHAT FACTUAL AND LEGAL ISSUES ARE GENUINELY IN DISPUTE?

Issues identified in the complaint and answer, including without limitation:

Whether Defendants have enforced the Building Code, and related local laws, in violation of the First and Fourteenth Amendments of the United States Constitution.

Whether Defendants have enforced the Building Code, and related local laws, in violation of Article I, Sections 3 and 11, of the New York State Constitution.

Whether Defendants have enforced the Building Code, and related local laws, in violation of the Fair Housing Act; 42 U.S.C. § 3601 *et seq.*

Whether Defendants have enforced the Building Code, and related local laws, in violation of the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc *et seq*.

Whether Defendants violated Plaintiffs' constitutional rights by refusing to grant Plaintiffs exemptions to certain provisions of the Building Code, as well as related local laws, based on their religious practices.

Whether the Town of Morristown has a compelling interest in strictly enforcing certain provisions of the Building Code and related local laws against the Plaintiffs, and whether it has used the least restrictive means available to further any that interest.

Whether Defendants have selectively and/or discriminatorily enforced the Building Code, and related local laws, against members of Plaintiffs' religious group.

According to the Defendants, the following legal issues are genuinely in dispute and must be further developed throughout discovery:

What are the sincerely held religious beliefs of the Swartzentruber Amish faith?

The extent to which Plaintiffs' alleged religious beliefs are implicated by Local Law #4 and the Building Code?

The extent to which Plaintiffs' alleged religious beliefs have changed?

Whether the enactment and enforcement of Local Law #4 and the Building Code interferes with Plaintiffs' sincerely held religious beliefs.

Whether the enforcement of Local Law #4 and the Building Code substantially burdens Plaintiffs' free exercise of religion.

What are Plaintiffs' alleged damages, if any.

10) CAN THE ISSUES IN LITIGATION BE NARROWED BY AGREEMENT OR BY MOTIONS? ARE THERE DISPOSITIVE OR PARTIALLY DISPOSITIVE ISSUES APPROPRIATE FOR DECISION ON MOTION?

At this time, the parties are unaware of anything responsive to this question

11) WHAT SPECIFIC RELIEF DO THE PARTIES SEEK? WHAT ARE THE DAMAGES SOUGHT?

Plaintiffs seek a permanent injunction enjoining the Defendants: 1) to issue building permits to Plaintiffs; 2) from enforcing the Town of Morristown's Local Law # 4, the Building Code, or other laws, in a manner than substantially burdens the Plaintiffs' religious beliefs without a compelling government interest or by any means other than the least restrictive means to further such an interest; 3) from enforcing Local Law # 4, the Building Code, or other laws, in a discriminatory, selective or otherwise non-neutral manner against Plaintiffs or any other members of their distinctive religious, ethnic and linguistic minority group; and 4) from imposing any other penalty on Plaintiffs for the exercise of their constitutionally and statutorily protected rights. Plaintiffs also seek declaratory relief stating that: Defendants violated Plaintiffs' civil rights through the manner in which they have enforced the Building Code and Local Law # 4 against Plaintiffs, monetary damages in an amount to be determined at trial, and such other relief as may be just and proper.

Defendants seek the dismissal of all the claims asserted against them, costs and attorneys' fees.

12) DISCOVERY PLAN:

A. Mandatory Disclosures

The parties will exchange the mandatory disclosures required under Rule 26(a)(1) on or before:

June 1, 2009

B. Subjects of Disclosure

The parties jointly agree that discovery will be needed to address the following subjects:

Issues identified in the complaint and answer, including without limitation:

The nature of Defendants' enforcement of the Building Code and Local Law # 4 against the Amish residents of Morristown.

The nature of Defendants' enforcement of the Building Code and Local Law # 4 against the non-Amish residents of Morristown.

The nature of Defendants' interests in code enforcement against the Amish residents of Morristown and the nature of alternatives to current enforcement actions.

Any personal experience the individual Defendants have had with past or current members of the Amish faith.

Whether Defendants have granted any exemptions to, or have otherwise not strictly enforced, the Building Code, and related local laws, in the past and the basis for the exemptions or lack of enforcement.

How other state and local government officials accommodate religious practices, and in particular Old Order Amish practices, when they conflict with provisions of the local and state building and fire code.

Discovery will be needed for the Defendants to address the following subjects:

The sincerely held religious beliefs of the Swartzentruber Amish as they relate to Local Law #4 and the Building Code.

Portions of the *Ordnung* as they relate to Local Law #4 and the Building Code.

The extent to which the Plaintiffs' alleged religious beliefs have changes and continue to change.

Plaintiffs continuous refusal to comply with Local Law #4 and the Building Code.

The number of frequency of fires and related injuries that have occurred in Amish homes and buildings in Morristown.

The number and frequency of injuries caused by structural deficiencies in Amish homes and buildings in the Town of Morristown.

C. Discovery Sequence

Describe the parties' understanding regarding the timing of the discovery, and state whether it is anticipated that discovery will be phased to address different issues in stages.

At this time, it is not anticipated that discovery will be phased to address different issues in stages. All discovery shall be completed by **December 1, 2009.** Discovery shall be completed according to the following:

1) Initial requests for the production of documents served by **June 1, 2009**

D. Written Discovery

Describe the written discovery demands which the parties contemplate serving under Rules 33, 34 and #36, including when they will be promulgated, the areas to be covered, and whether there is any need for any party to exceed the number of interrogatories permitted under Rule 33.

Plaintiffs intend to serve interrogatories, requests to produce documents, and requests to admit under Rules 33, 34 and 36, within the time frame listed above. Plaintiffs do not anticipate exceeding the number of interrogatories permitted under Rule 33.

Defendants intend to serve interrogatories, requests to produce documents and requests to admit pursuant to the FRCP.

E. Depositions

Set forth the parties' expectations regarding depositions, including the approximate number to be taken, their location, a general description of the deponents, and an indication of whether any non-party fact depositions are anticipated.

Plaintiffs will depose all relevant witnesses disclosed through discovery, which may include Defendants; non-party residents of the Town of Morristown who may have knowledge about the facts of this case, non-party former and current Morristown Town officials who may be able to shed light on the issues of the case, non-party residents and town officials from surrounding towns who may be able to shed light on the issues of the case. Plaintiffs expect to depose any and all expert witnesses disclosed by Defendants. Plaintiffs expect to take approximately ten depositions, all of which will likely take place in St. Lawrence County.

Defendants intend to depose all Plaintiffs, Bishops of Swartzentruber Amish faith as well as all other relevant witnesses that are disclosed throughout discovery.

F. Experts

Set forth the parties' expectations regarding the retention of experts, and identify any particular issues to be addressed by the court concerning the retention and exchange of the information regarding experts, including whether the parties seek a variance from the expert disclosure requirements of the form uniform pretrial scheduling order typically issued by the court (i.e., initial expert disclosure at least ninety days, responsive expert disclosures at least forty-five days, and rebuttal reports due at least thirty days, before the close of discovery).

Plaintiffs intend to retain one or more experts who may address the following subjects: the religious beliefs, practices and history of the Amish religion and the proper application of the Building Code at the state, county and local levels (including, without limitation, the broad discretion available to and typically exercised by officials charged with enforcement).

Defendants retain the right to retain responsive experts.

The parties intend to follow the expert disclosure requirements of the form uniform pretrial scheduling order typically issued by the court.

G. **Electronic Discovery**

Set forth the parties' understanding and expectations regarding discovery of electronically stored information. This description should include any agreements reached with respect to the retention of electronically stored information and the manner in which it will be produced, if requested. The parties should also identify any agreements regarding the manner in which electronically stored information subject to claims of privilege or work product protection will be handled, and whether a court order will be requested, either on stipulation or otherwise, to address this issue. If an agreement has been reached on the entry of such an order, provide a brief description of the provisions which will be included in a proposed order.

> No agreement has been reached at this time. Plaintiffs intend to seek electronic discovery from Defendants in so far as such information exists and relates to the issues of the case.
>
> Plaintiffs do not use any form of electronic communication and as such, do not possess any electronically stored information. Any information that is in electronic form that pertains to this matter is communication involving Plaintiffs' attorneys, and is therefore privileged and/or work product.
>
> Defendants intend to seek electronic discovery that is relevant to the development of the issues in this case including, but not limited to any relevant correspondence and communications with the Becket Fund for Religious Liberty.

H. **Protective Orders**

If the parties anticipate requesting a protective order from the court pursuant to Rule 26(c), describe the basis for the request and nature of the proposed protective order.

> No protective orders are anticipated at this time.

I. **Anticipated Issues Requiring Court Intervention**

Provide a brief description of any discovery related issues which, the parties reasonably anticipate, may require court intervention.

> Plaintiffs anticipate court intervention may be needed to assist with determining the time and place of depositions of Plaintiffs, as their religious beliefs prevent them from using most forms of modern transportation. Plaintiffs, whose native language is not English, may also require an interpreter during depositions.
>
> At this time, Defendants do not anticipate any discovery related issues that may require Court intervention.

13) IS IT POSSIBLE TO REDUCE THE LENGTH OF TRIAL BY STIPULATIONS, USE OF SUMMARIES OR STATEMENTS, OR OTHER EXPEDITED MEANS OF PRESENTING EVIDENCE? IS IT FEASIBLE AND DESIRABLE TO BIFURCATE ISSUES FOR TRIAL?

At this time, the parties are unaware of anything responsive to this question.

14) ARE THERE RELATED CASES PENDING BEFORE THE JUDGES OF THIS COURT?

There are no related cases pending before the Judges of this Court.

15) IN CLASS ACTIONS, WHEN AND HOW WILL THE CLASS BE CERTIFIED?

Not applicable.

16) WHAT ARE THE PROSPECTS FOR SETTLEMENT? Please circle below the prospect for settlement:

1-----2-----3-----4-----(5)-----6-----7-----8-----9-----10
(VERY UNLIKELY)➔ ➔ ➔ ➔ ➔ ➔ ➔ ➔ ➔ ➔ ➔ ➔ LIKELY)

HOW CAN SETTLEMENT EFFORTS BE ASSISTED?

A Court-scheduled settlement conference may assist the parties' settlement efforts.

17) IF YOUR CASE WAS SELECTED AS A QUALIFYING CONTRACT, TORT, OR NON-PRISONER CIVIL RIGHTS ACTION, PLEASE SELECT THE PREFERRED ADR METHOD.

_________ ARBITRATION

_________ MEDIATION

____X_____ EARLY NEUTRAL EVALUATION

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Pursuant to Fed. R. Civ. P. 26(f) conversations were held on March 18, 2009 and April 15, 2009 via telephone by and between:

Jessica J. Kastner for Plaintiffs

Gregg T. Johnson for Defendants

At the Rule 16(b) conference, the Court will issue an order directing the future proceedings in this action. The parties are advised that failure to comply with this order may result in the imposition of sanctions pursuant to Federal Rules of Civil Procedure 16(f).

Please detach this case management plan form and return the completed form to the clerk for filing at least ten (10) days in advance of the conference date.

Case Management Plan
Form Date - 06/13/2007